RECENT IMPORTANT DECISIONS.

APPEARANCE—WAIVER OF OBJECTION TO JURISDICTION BY APPEAL.—Defendant corporation contends that it was error upon the part of the lower court to refuse to quash the service of summons. *Held,* that by appealing from the judgment rendered against it, the defendant is now in court and no further service on it is required. *Merrimac Mfg. Co.* v. *Bibb,* (Ark. 1915), 178 S. W. 403.

The rule in this case seems to be the law in Arkansas, Florida and Kentucky. *Gilbreath* v. *Kuykendall,* 1 Ark. 50; *Standley* v. *Arnow,* 13 Fla. 361; *Chesapeake, Ohio & S. W. R. R. Co.* v. *Heath's Adm'r,* 87 Ky. 651, 9 S. W. 652. It was first laid down in an 1809 Kentucky case that cited neither reason nor precedent to support its ruling. *Grace* v. *Taylor,* 1 Bibb 430. In none of the cases applying the rule is there any extended discussion or examination of the point involved. It is not shown in the principal case whether or not the defendant attempted to save his objection to the jurisdiction when he answered to the merits. This is not possible in all jurisdictions, but has been allowed in Arkansas and Kentucky. *Spratley* v. *Louisville & A. Ry. Co.,* 77 Ark. 412, 95 S. W. 776; *Chesapeake, Ohio & S. W. R. R. Co.* v. *Heath's Adm'r,* supra. The decisions in Florida are in conflict. *Florida Railroad Co.* v. *Gensler,* 14 Fla. 122; *Lente* v. *Clarke, 22* Fla. 515; *Stephens* v. *Bradley,* 24 Fla. 201, 3 So. 415. But the rule of the principal case has been applied in Arkansas and Kentucky even where the court affirmatively held that the answer to the merits was not a waiver of the objection. *Adams Mach. Co.* v. *Castleberry,* 84 Ark. 573, 106 S. W. 940; *Chesapeake, Ohio & S. W. R. R. Co.* v. *Heath's Adm'r,* supra. There would appear to be no reason for saving the objection if securing the review of the lower court's decision is to constitute an appearance in the cause, and authorize a re-trial without further summons. In most jurisdictions, the supreme court itself, in sustaining the objection to the service of summons, reverses the decree or dismisses the cause, or remands the cause to the lower court to reverse or dismiss. *Harkness* v. *Hyde,* 98 U. S. 476; *Davidson Bros. Marble Co.* v. *Gibson,* 213 U. S. 10; *Walling* v. *Beers,* 120 Mass. 548; *Lathrop* v. *Slack,* 17 Wend. 85; *Fisher* v. *Crowley,* 57 W. Va. 312, 50 S. E. 422; *Warren* v. *Crane,* 50 Mich. 300, 15 N. W. 465. The courts of Minnesota, North Dakota and Michigan have expressly refused to declare the rule of this case. *Craighead* v. *Martin,* 25 Minn. 41; *Miner* v. *Francis & Southard,* 3 N. D. 549; *Freer* v. *White,* 91 Mich. 74, 51 N. W. 807. The best justification for the rule in the principal case seems to be that the prosecution of the appeal constitutes sufficient notice to enable the defendant to appear and defend. *Hockaday* v. *The Commonwealth,* 4 T. B. Mon. (Ky.) 12. The opposite rule is based on the technically sound legal reasoning that "an act, which in itself is a denial of all authority * * * can not be regarded as a voluntary appearance and express recognition of * * * [that] * * * authority." *Craighead* v. *Martin,* supra.